

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 September 2003

Case No.: 2003-MSA-00002

In the Matter of

HIGHLAND MINING COMPANY
(Formerly Peabody Coal Company)
Petitioner

v.

THE UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY & HEALTH ADMINISTRATION (MSHA)
Party Opposing Petition

and

UNITED MINE WORKERS OF AMERICA
Party-in-Interest

BEFORE: JOSEPH E. KANE
Administrative Law Judge

**DECISION APPROVING SETTLEMENT
and ORDER OF DISMISSAL**

This procedure arises under Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(c), and its implementing regulations found at 30 C.F.R. Part 44. On August 28, 2001, Highland Mining Company (hereinafter Highland or Petitioner) petitioned the Mine Safety and Health Administration (Administrator) for a modification of the application of 30 C.F.R. 75.1002 relating to mandatory safety standards. Following an investigation, the Administrator issued a Proposed Decision and Order (PDO) on December 5, 2001. (Exhibit 1 to attached Consent Agreement Between the Parties). In its proposed Order, the Administrator concludes that the alternative method proposed by Petitioner pertaining to the use of a 2400-volt continuous miner, subject to a number of terms and conditions, will at all times guarantee no less than the same measure of protection afforded the miners under 30 C.F.R. 75.1002. On September 9, 2002, Highland filed an amendment to the petition with the Administrator, requesting that he modify certain terms of the previously granted modification. The Administrator

treated Petitioner's amendment as a new petition, conducted a new investigation and issued a new PDO on March 3, 2003, granting the petition. (Exhibit 2 to attached Consent Agreement Between the Parties). The March 2003 PDO revised the language of items 14(b) and 43(b) of the December 5, 2001 PDO, and left the language of item 42 identical to the previous petition.

The above three items in the new (March 2003) PDO are the subject of Petitioner's Request for Hearing. The case was assigned to the undersigned administrative law judge, who issued a Preliminary Order on June 4, 2003, to which the parties filed timely responses.

On August 20, 2003, Highland and the Administrator submitted a Consent Agreement Between the Parties which resolves the issues in dispute pertaining to the modification request of Highland. As part of the consideration for the Consent Agreement, the Administrator has listed therein the changes in the matters at issue which are amenable to the parties. Those changes are reflected in the Consent Agreement executed by the parties. The Consent Agreement and the March 3, 2003, Proposed Decision and Order are incorporated herein by this reference.

The parties also agree that:

1. All the terms and conditions set forth in the March 3, 2003, Proposed Decision and Order, with the addition of the new language stated in the Consent Agreement, are agreed to by the parties;
2. The record on which this Order is entered includes consideration of the petition, the administrative record, the March 3, 2003, Decision and Order, and the special terms and conditions incorporated into the Consent Agreement;
3. Highland's alternative method of compliance will provide at least the same level of protection as provided by the mandatory standard;
4. Any order issued in this proceeding by the undersigned Administrative Law Judge shall have the same effect as if made after a full hearing;
5. They waive any further procedural steps before the undersigned Administrative Law Judge and the Assistant Secretary for Mine Safety and Health; and
6. They waive any right to challenge or contest the validity of the findings and Order made in accordance with the agreement.

ORDER

I have carefully examined the Consent Agreement Between the Parties and the Proposed Decision and Order of the Administrator for Coal Mine Safety and Health. Following that

review, I have concluded that the Consent Findings are consistent with the requirements of 30 C.F.R. § 44.27 and, therefore, are accepted. The petition of Highland Mining Company in this matter is therefore dismissed. This Order constitutes the final agency action.

A

JOSEPH E. KANE
Administrative Law Judge